

09-3224
LOCALLY ASSESSED PROPERTY
SIGNED 06-23-2010

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER	INITIAL HEARING ORDER
Petitioners,	Appeal No. 09-3224
v.	Parcel No. #####
BOARD OF EQUALIZATION OF DUCHESNE COUNTY, UTAH,	Tax Type: Property Tax/Locally Assessed
Respondent.	Tax Year: 2009
	Judge: Dixon Pignanelli

Presiding:

D'Arcy Dixon Pignanelli, Commissioner

Appearances:

For Petitioner: PETITIONER, Pro Se, by phone
For Respondent: RESPONDENT REP., Assessor, Duchesne County

STATEMENT OF THE CASE

Petitioner (the "Property Owner") is appealing the assessed value established for the subject property for the lien date DATE by the Duchesne County Board of Equalization (BOE). The County Assessor set the value at \$\$\$\$ and the County BOE reduced the value to \$\$\$\$.

Pursuant to Utah Code Annotated Sec. 59-1-502.5 an initial hearing was held on DATE in the Duchesne County Offices. The Property Owner requested the value be lowered to \$\$\$\$.

The representative for Respondent (the "County") requested the value set by the County BOE, \$\$\$\$\$, be sustained.

APPLICABLE LAW

All tangible taxable property shall be assessed and taxed at a uniform and equal rate on the basis of its fair market value, as valued on January 1, unless otherwise provided by law. (Utah Code Ann. Sec. 59-2-103 (1).)

"Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. (Utah Code Ann. 59-2-102(12).)

(1) Any person dissatisfied with the decision of the county board of equalization concerning the assessment and equalization of any property, or the determination of any exemption in which the person has an interest, may appeal that decision to the commission by filing a notice of appeal specifying the grounds for the appeal with the county auditor within 30 days after the final action of the county board. . . . (4) In reviewing the county board's decision, the commission shall adjust property valuations to reflect a value equalized with the assessed value of other comparable properties if: (a) the issue of equalization of property values is raised; and (b) the commission determines that the property that is the subject of the appeal deviates in value plus or minus 5% from the assessed value of comparable properties. (Utah Code Ann. Sec. 59-2-1006(1)&(4).)

To prevail in a real property tax dispute, the Petitioner must (1) demonstrate that the County's original assessment contained error, and (2) provide the Commission with a sound evidentiary basis for reducing the original valuation to the amount proposed by Petitioner. *Nelson v. Bd. of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997). See also Utah Code Sec. 59-1-1417 which provides, "In a proceeding before the commission, the burden of proof is on the petitioner . . ."

DISCUSSION

The subject property is parcel no. ##### and is located in the SUBDIVISION (AREA) on the ROAD in Duchesne County, Utah. The subject is a 10-acre lot with a cabin. The lot is only accessible mid-May to November 1 each year and is in an area with no power, water or sewer. The subject property does have a septic tank, generator, and propane heat system, but water must be hauled into the site. The 10-acre lot is on a hillside in aspens and pine trees. The cabin is a 900 square foot (30x30) rustic one-story log cabin with a 450 square foot (15 x 30) loft. It has a barn style roof with floor to ceiling windows that overlook a 300 square foot "L" shaped deck on the front. The cabin was built in 1999. The 10-acre lot is valued at \$\$\$\$\$ and the cabin at \$\$\$\$\$.

The Property Owner explained that when he prepared the appeal to be filed he was in the hospital with (WORDS REMOVED). The appeal was signed on September 29, 2009 and was received in the tax commission office on October 27, 2009. The Property Owner explained he is currently in the process of a divorce, and his wife could not find his file of paper work on the appeal so he had nothing before him and felt at a disadvantage for the hearing. In requesting a value of \$\$\$\$\$, the Property Owner did not state whether he was contesting the value of the land

or the value of the improvements. He did say that the cabin on the lot was a kit and he bought the property with the cabin already on the property.

For his appeal to the County BOE the Property Owner had submitted one sales comparable from the Wasatch Front Multiple Listing Service (MLS). He asked the Commission to consider the same sales comparable. According to the MLS sheet the sales comparable is a ten-acre lot in the Clarke subdivision three miles south of HIGHWAY. It notes it is horse property with year round access. It has a bungalow/cottage cabin constructed in 1980, and needs “septic and well”. The MLS also says “still under construction,” but it is not clear if that is the lot or the cabin. The property sold for \$\$\$\$\$ on October 14, 2008.

The Assessor said his office did a reappraisal of the AREA in 2008, and in doing so looked at sales in other recreational areas. He testified he concluded sales were “dried up” in a bad economy so he used the cost approach to value improvements. He used the Marshall and Swift cost tables, which he feels are better for valuing a log cabin. He determined the cabin was 100% complete and used a multiplier to reach a replacement cost new less depreciation value. The BOE reduced the value of the improvements by \$\$\$\$\$ to \$\$\$\$\$ based on “fair construction quality”. The following are the final improvement values provided by the Assessor.

Item(s)	Count	Cost	Total
Rustic Log	1,350	\$\$\$\$\$	\$\$\$\$\$
Roof Composition Shingle	900	\$\$\$\$\$	\$\$\$\$\$
Misc: Raised subfloor	900	\$\$\$\$\$	\$\$\$\$\$
Floor cover – hardwood	338	\$\$\$\$\$	\$\$\$\$\$
Misc, plumbing fixtures	4	\$\$\$\$\$	\$\$\$\$\$
Heating/cooling – wall furnace	1,350	\$\$\$\$\$	\$\$\$\$\$
Misc. wood stove	1	\$\$\$\$\$	\$\$\$\$\$
Appliances – automatic appliance allowance	1	\$\$\$\$\$	\$\$\$\$\$
Porch/deck – wood deck	308	\$\$\$\$\$	\$\$\$\$\$
Yard improvements – storage building, wood	120	\$\$\$\$\$	\$\$\$\$\$
Attic- loft	450	\$\$\$\$\$	\$\$\$\$\$
Total, Replacement Cost New	900	\$\$\$\$\$	\$\$\$\$\$
Area – AREA	1	\$\$\$\$\$	\$\$\$\$\$
Depreciation (table) 60 year life expectancy	11	(\$\$\$\$\$)	(\$\$\$\$\$)

Total with depreciated cost	900	\$\$\$\$	\$\$\$\$
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The Assessor stated he tried to research the MLS sale provided by the Property Owner, but the Tax ID # did not exist. He concluded the numbers must have been transposed when listed on the MLS

In seeking a value lower than that established by the County BOE the Property Owner has the burden of proof and must demonstrate not only an error in the valuation set by the County BOE, but must also provide an evidentiary basis to support a new value. The value set by the County BOE at the BOE hearing has the presumption of correctness at a Tax Commission Hearing.

The Taxpayer provided one sales comparable that sold two and half months before the lien date. It is similar to the subject property in that it is a ten-acre lot with a cabin and sold for \$\$\$\$\$. The Commission has shown preference for comparable sales prior to the lien date and holds the Property Owner has provided evidence to call into question the value of the subject property. The Commission now considers the totality of the evidence.

The Assessor testified the AREA where the subject property is located was reappraised. Reappraisal is required by law to been done every five years. The reappraisal would assist in providing values for the lots. The Assessor also testified that he looked at sales in the area, and sales in other recreational areas and concluded they were dried up so he used the cost approach to value improvements. The subject property had a cabin that was built in 1999; the Property Owner's comparable was built in 1980. That is almost a twenty-year difference in age. The subject property has a septic tank, generator, and a propane heat system and some means for holding water that is hauled-in; the MLS sheet on the sales comparable says it is "very rustic" and needs septic and a well. The Assessor put a \$\$\$\$\$ value on the location of the subject property. It is not clear from the MLS sheet if the comparable is in a desirable location and what value would be placed on that location

The Property Owner has met the burden of proof to demonstrate a possible error in the valuation, but has not met the burden of providing an evidentiary basis to support a new value. The Property Owner has provided one sales comparable, but that is not enough evidence to establish a different value for the 10-acre lot itself or lots with cabins, nor challenge the value placed on the improvements. In addition, the Property Owner did not provide value adjustments to his sales comparable for location, effective date of construction, or other improvements as of the lien date. The County provided testimony on reappraisal of the area, the state of sales in the area due to the economy, the reason for using Marshall and Swift data to value the improvements,

and specifics in reaching those values. In addition, the Commission notes the BOE record shows the BOE downgraded the quality of construction of the subject property improvements to fair, which is reflected in the BOE adjusted value; however, because it is not clear from the county records provided at the hearing why there is a difference between \$\$\$\$ reached on the Assessor's Cost Approach, and the value of \$\$\$\$ used by BOE, the Commission will lower the value of the improvements to the \$\$\$\$ reflected on the County's Valuation Records.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the value of the subject property as of January 1, 2009, \$\$\$\$\$. The County Auditor is hereby ordered to adjust its records in accordance with this decision. It is so ordered.

This Decision does not limit a party's right to a Formal Hearing. Any party to this case may file a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed to the address listed below and must include the Petitioner's name, address, and appeal number:

Utah State Tax Commission
Appeals Division
210 North 1950 West
Salt Lake City, Utah 84134

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this ____ day of _____, 2010.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

DDP/09-3224